LEE SWEE YANG

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
S RAJENDRAN J
[MAGISTRATE'S APPEAL NO. 180/91/01]
28 AUGUST 1991

CRIMINAL PROCEDURE: *Procurement for prostitution - Custodial sentence - Trial Judge took into account fact of prostitutes having AIDS - Whether irrelevant and prejudicial consideration - Specific charge - Women's Charter, Cap. 353 [Sing], s. 140(1).*

The appellant pleaded guilty to an offence of procuring L into Singapore for prostitution under s. 140(1)(d) of the Women's Charter and was sentenced to 3 months imprisonment. It was alleged by the appellant, in this appeal, that the Judge imposed this custodial sentence as a result of the prosecutor's statement that a number of Thai prostitutes had been found to be infected with the AIDS virus. It was argued by the appellant that this factor was an irrelevant and prejudicial consideration which should not have been taken into account by the Judge in determining sentence.

Held:

[1] Neither the fact that Thai prostitutes were brought into Singapore by the appellant, nor the fact that these prostitutes were found to be infected with AIDS, were facts which could be held against the appellant. There was no conviction against the appellant that he had brought anyone other than L into Singapore for the purpose of prostitution and it is for that offence only that he must be punished, not for any other offences that those employing him may have committed.

[2] Furthermore, there was no evidence that L was infected with AIDS. That being so, it would be wrong to conclude that the appellant was assisting in the spread of AIDS and punish him on that basis. The learned district Judge had therefore misdirected himself.

[Appeal allowed; custodial sentence set aside and pecuniary penalty imposed.]

Legislation referred to:
Women's Charter [Sing], ss. 140(1), (d)

For the appellant - S. Radhakrishnan; M/s. Bernard Rada & Lee
For the respondent - Jeniffer Marie DPP

JUDGMENT

S Rajendran J:

On 25 May 1991 the appellant was charged as follows in the District Court:

> NRIC No. 0004248 (FOM)
>
> You, Lee Swee Yang, m/26 years, are charged that you, on 20 May 1991 at about 6.45 a.m., did bring one Lamduan Panyachai, Thai Passport No. A 158381 into Singapore knowing that the said Lamduan Panyachai had been procured for the purpose of prostitution within Singapore and with the intent to aid such purpose, and you have thereby committed an offence under s. 140(1)(d) and punishable under s. 140(1) of the Women's Charter, chapter 353.

The appellant, who was unrepresented, pleaded guilty and was sentenced to a term of 3 months imprisonment. He now appeals against the sentence imposed.

The facts admitted to by the appellant were that on 20 May 1991 he was approached by a member of a vice syndicate in Johore Bahru to bring a female Thai, Lamduan Panyachai, into Singapore for the purpose of prostitution. The appellant was to be paid Malaysian $60 if he succeeded in obtaining a social visit pass at the immigration booth along Woodlands Checkpoint. If the appellant was required to vouch for the female Thai before a social visit pass was obtained, he would be paid Malaysian $100. The appellant and the said Thai female were arrested by a police party from the Anti-Vice Enforcement Unit, CID, at the Woodlands Checkpoint, Singapore.

It appears from the trial record that upon the appellant being convicted for the offence the prosecutor urged the District Judge to impose a deterrent custodial sentence on the grounds that the appellant was working for a syndicate which was bringing Thai prostitutes into Singapore. The prosecutor also told the District Judge that a number of these prostitutes had been found to be infected with Acquired Immune Disease Syndrome (AIDS) and that the appellant's acts would be dangerous to Singapore.

The learned District Judge was obviously influenced by this submission. In his grounds of decision he stated:

> The prosecution however, pressed for a custodial sentence as the accused was working for a syndicate which is bringing Thai prostitutes found to be infected with AIDS (Acquired Immune Disease Syndrome). The offence committed by the accused would therefore be a danger to Singapore.
>
> It is clear that AIDS (Acquired Immune Disease Syndrome) is fatal and if left unchecked, it could spread in no time. In assisting the vice syndicate to bring Thai prostitutes into Singapore, the accused was creating as potential danger, that is the spreads of AIDS. The Court was of the view that the present offence must be treated seriously and the circumstances certainly call for a custodial sentence to deter the accused and others from committing such offences.

Counsel for the appellant criticised the learned District Judge for having taken irrelevant and prejudicial matters into consideration in determining the sentence to impose. The Deputy Public Prosecutor, however, submitted that the learned District Judge was entitled to take judicial notice of the fact that AIDS was rampant in Thailand and that, in determining the appropriate sentence to impose, it was proper for him to have taken into consideration the dangers of AIDS spreading in Singapore.

The charge on which the appellant was convicted was in respect of bringing one Lamduan Panyachai (who happened to be a Thai national) into Singapore for the purpose of prostitution. It may well be that the syndicate for whom the appellant was working had brought many prostitutes into Singapore but that is not a fact that can be held against the appellant in respect of the charge on which he was convicted. There was no conviction against the appellant that he had brought anyone other than Lamduan Panyachai into Singapore for the purpose of prostitution. It is for that offence that he must be punished - not for any other offences that those employing him may have committed.

The learned District Judge in his judgment also appears to have accepted the submission of the prosecutor that a number of Thai prostitutes brought in by the syndicate into Singapore were found to be infected with AIDS. Again, even if that was so, that is not a fact which can be held against the appellant. In this case, there was no evidence that Lamduan Panyachai was infected with AIDS. That being so it would be wrong to conclude that the appellant was assisting in the spread of AIDS and punish him on that basis.

For the above reasons, I accepted the submission of Counsel for the appellant that the learned District Judge had misdirected himself and accordingly allowed the appeal and set aside the sentence that was imposed.

Counsel for the appellant drew my attention to a number of cases where, for similar types of offences, fines varying from $1,200 to $4,000 had been imposed in the Subordinate Courts. Bearing in mind that the appellant had a clean record and that immediately upon being charged he had pleaded guilty, I imposed a fine of $4,000 in default 6 months imprisonment.

Also found at [1991] 3 CLJ 2707